IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1527 of 2001

Date of Decision: 10.10.2007

Jati Ram & Ors. ...Appellants

Vs.

Dharam Singh (dead through L.Rs. & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Ashok Verma, Advocate,
for the appellants.

Mr.B.S.Bairagi, Advocate,
for respondents No. 2 to 6.

Mr. S.N.Saini, Advocate,
for respondents No.7 & 8.

Vinod K.Sharma, J. (Oral)

This regular second appeal has been filed against the judgments and decrees passed by the learned courts below vide which suit filed by the plaintiff-appellants for declaration that the sale deed dated 23.11.1973 was null and void and not binding upon the rights of the plaintiff-appellants has been ordered to be dismissed.

The appellant-plaintiffs had filed a suit claiming that the sale

deed dated 23.11.1973 was bad in law as the vendor Smt. Khazani had sold excess of her share in the joint property. The plaintiff-appellants are sons of the vendor. During the pendency of the suit Ram Kishan son of the vendor died and his property was inherited by the vendor. The mutation of inheritance was sanctioned in favour of Vendor Smt.Khazani and the learned courts below therefore, came to the conclusion that as Smt.Khazani now owned the property and therefore, the sale deed could not be set aside on the ground of sale of excess land. The court below also rejected the plea of the plaintiff-appellants by holding the suit to be time barred as the suit was filed in 1985 challenging the sale deed dated 23.11.1973.

The plaintiffs had also set up the Will alleged to have been executed in favour of the plaintiffs by Ram Kishan. However, both the courts below have rejected the Will as the plaintiffs failed to produce the Will in court nor proved the same.

Learned counsel for the appellants contends that the following substantial questions of law arise in this appeal for consideration of this Court:-

1. Whether once the Will executed by the testator is discarded and disbelieved, his property would be inherited as per the law of natural succession?
2. Whether it is the duty of the Court to frame all the necessary issues arising from the pleadings of the parties?
3. Whether evidence can be recorded on a plea regarding

which no issue has been framed?

4. Whether a sale deed vide which area in excess of his share has been sold away by the vendor, would stand validated with retrospective effect from the date on which the vendor acquires additional area in the joint khewat to make up the deficiency?

5. Whether a copy of mutation is per se admissible in evidence?

6. Whether the true legal import and implications of the provisions of section 43 of the Transfer of Property Act have been misconstrued?

7. Whether the findings of the two courts below recorded without any serious application of mind to the facts and circumstances of the case would enjoy the sanctity of concurrent findings so as to be immune to challenge and interference in the second appeal?

Reading of the above said substantial questions of law as framed shows that none of the said questions can be said to be substantial question of law nor the same arise. The plaintiffs had never set up a case claiming inheritance on the basis of natural succession but their claim was on the basis of Will and therefore, it could hardly be said that after discarding the Will the courts were required to pronounce on the basis of natural succession as is sought to be contended by the learned counsels for the appellants.

Substantial questions of law No.2 and 3 as framed are without any basis as it is not the case of the plaintiff-appellants even before the learned lower appellate court that the proper issues were not framed as mentioned.

Fourth substantial question of law as framed by the learned counsel for the appellants also does not arise. The court has recorded a positive finding that Khazani was not competent to sell the land in excess of her share and it could not be said that she sold land in excess of her share because of inheritance and mutation having been sanctioned in her favour.

Similarly substantial questions of law No.5 to 7 are also misconceived and do not arise in the present appeal. The suit filed by the plaintiff-appellant, therefore, was rightly dismissed.

No merit.

Dismissed.

(Vinod K.Sharma)
Judge

10.10.2007
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